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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/067,145	02/04/2002	Ronald A. Bichel	25092-13	4799

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EXAMINER

RODRIGUEZ, JOSEPH C

ART UNIT PAPER NUMBER

3653

DATE MAILED: 06/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/067,145

Applicant(s)

BICHEL ET AL.

Examiner

Joseph C Rodriguez

Art Unit

3653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) 11-20,30-36 and 44-51 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8,21-29 and 37-43 is/are rejected.
- 7) ☒ Claim(s) 9 and 10 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of group I in the reply filed on 2/27/2004 is acknowledged. The traversal is on the grounds that the groups are not materially different and that no serious burden exists. This is not found persuasive. Here, the principal difference between the restricted groups is the gearing system found in claim group II. This gearing system is absent from the other groups and, moreover, requires searching in alternative classes such as class 495, gearing. Further, the focus on food apparatus *and processes* in the distinct claim groupings necessitates searching in class 209, sorting; in class 99, food apparatus and in class 426, food processes. This searching in different classes, when coupled with the materially different feature of the gearing system, serves to satisfy the restriction requirements.

The requirement is still deemed proper and is therefore made FINAL.

Claims 11-20, 30-36 and 44-51 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected claim grouping, there being no allowable generic or linking claim.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 21-29 and 37-43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase "such as" (claim 21, ln. 2; claim 37, ln. 2; claim 41, ln. 2) renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8, 21-24, 25-27 and 37-43 are rejected under 35 U.S.C. 102(b) as being anticipated by Zittel (US '614).

Zittel teaches an apparatus and method (Fig. 14-19) comprising a downwardly sloping (Fig. 14) rotating cage (76, 296) with a drive unit (78, 328), an inlet (near 62) and an outlet (near 66) and counter-rotating rollers (42; col. 4, ln. 47-58; col. 8, ln. 44-58; col. 16, ln. 40-53), wherein Zittel teaches using said rollers and said rotating cage to clean food product, such as fruits and vegetables, in a separating operation (col. 1, ln. 18 et seq.; col. 19, ln. 11-56). Here, the separating operation is regarded as capable of removing soft food product from firm product since rough, abrasive counter-rotating rollers are used. Further, the rollers are regarded as counter-rotating as Zittel teaches

using multiple variable frequency drives to vary the speed (i.e., revolution), as well as the direction, of the rollers (col. 4, ln. 47-58; col. 16, ln. 40-53).

Further, Applicant is respectfully reminded that the material or article worked upon by the apparatus (e.g., soft food) does not limit apparatus claims. See MPEP 2115.

Allowable Subject Matter

Claims 9-10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 28 and 29 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

Any references not explicitly discussed above but made of record are considered relevant to the prosecution of the instant application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C Rodriguez whose telephone number is **703-308-8342**. The examiner can normally be reached on M-F during normal business hours (9 am – 6 pm, EST).

Art Unit: 3653


The **Official** fax phone number for the organization where this application or proceeding is assigned is **703-872-9326** (After-Final **703-972-9327**).

The **UnOfficial** fax phone number for the organization where this application or proceeding is assigned is **703-306-2571** or **703-308-6552**.

The examiner's **UNOFFICIAL Personal fax number** is **703-746-3678**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Receptionist** whose telephone number is **703-308-1113**.

June 7, 2004


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